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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/289,258	04/09/1999	EDWARD J. VASEL	62862	8381

22242 7590 01/09/2002

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120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

TUDOR, HAROLD JAY

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 01/09/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER *Plan*

ART UNIT PAPER NUMBER

DATE MAILED: *29/7*

This is a communication from the examiner in charge of this application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

#### NOTICE OF ALLOWABILITY

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course. THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS. This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

- ☒ This communication is responsive to *Applicant's amendment of Nov 15, 2001*
- ☒ The allowed claim(s) is/are *193, 195-203, 206-212*
- ☐ The drawings filed on \_\_\_\_\_ are acceptable as formal drawings.
- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. THIS THREE-MONTH PERIOD IS NOT EXTENDABLE FOR SUBMITTING NEW FORMAL DRAWINGS, OR A SUBSTITUTE OATH OR DECLARATION. This three-month period for complying with the REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL is extendable under 37 CFR 1.136(a).

- ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.
- ☐ Applicant MUST submit NEW FORMAL DRAWINGS
- ☐ because the originally filed drawings were declared by applicant to be informal.
- ☐ including changes required by the Notice of Draftperson's Patent Drawing Review, PTO-948, attached hereto or to Paper No. \_\_\_\_\_
- ☐ including changes required by the proposed drawing correction filed on \_\_\_\_\_, which has been approved by the examiner.
- ☐ including changes required by the attached Examiner's Amendment/Comment or in the Office action of Paper No. \_\_\_\_\_

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings.

- ☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any reply to this notice should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE/SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

#### Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Notice of Draftperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152
- ☒ Interview Summary, PTO-413 *11/13/01*
- ☒ Examiner's Amendment/Comment
- ☐ Examiner's Comment Regarding Requirement for the Deposit of Biological Material
- ☐ Examiner's Statement of Reasons for Allowance

*Harold J. Tudor*  
HAROLD J. TUDOR  
PRIMARY EXAMINER

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1. The request filed on November 15, 2001 for a Continued Examination Application (RCE) under 35 U.S.C. 132 based on parent Application No. 09/289,258 is acceptable and a RCE has been established. An action on the RCE follows.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

In accordance with a telephone interview between applicants' attorney, Mr. Thomas Lebens, and Examiner Tudor, on February 5, 2002, the following changes have been agreed upon to clearly define the invention over the prior art of record and to remove a question of new matter:

In lines 9-12 of the amended paragraph beginning on page 29, line 33, filed on November 15, 2001, "As is known in the art, oleoresin capsicum is known to contain or include capsaicin, dihydrocapsaicin, nordihydrocapsaicin, homocapsaicin, homodihydrocapsaicin and nonivamide." has been canceled.

In lines 12-15 of claim 193, ~~comprises~~ powdered oleoresin capsicum ~~has~~ been substituted for "includes a powdered substance comprising capsaicin, dihydrocapsaicin,

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nordihydrocapsaicin, homocapsaicin, homodihydrocapsaicin or nonivamide".


Claim 194 has been canceled.

In lines 16-18 of claim 203, --oleoresin capsicum-- has been substituted for "substance comprising capsaicin, dihydrocapsaicin, nordihydrocapsaicin, homocapsaicin, homodihydrocapsaicin or nonivamide".

Claim 204 has been canceled.

3. Riggs et al are cited as being of interest in that they disclose a pliant projectile containing a pepper powder. The effective date of this patent is January 18, 1997 which is after November 18, 1996 the filing date of applicants' prior application, 08/751,709, now U.S. Patent No. 5,965,839.

4. Guillot-Ulmann et al are cited as being of interest in that they disclose a flexible elastic projectile containing powdered oleoresin capsicum. The effective date of this patent is May 11, 1999 which is after the filing date of this application. Furthermore, the publication date of the French priority document is March 19, 1999, which is after March 9, 1999, the date which applicants' Declaration under 37 CFR 1.131 swears behind.



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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold J. Tudor, whose telephone number is (703) 306-4172.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198. The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



HAROLD J. TUDOR  
PRIMARY EXAMINER

